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Oversight Hearing on the Management of the Midway Atoll National Wildlife Refuge

Testimony for House Hearing: November 20, 2014

The International Midway Memorial Foundation (IMMF) is a non-profit, tax-exempt corporation, established in the state of Maryland in 1992, and is dedicated to the memory of the Battle of Midway.

Historical Perspective

The Battle of Midway, which took place from June 3-7, 1942, was a battle of historic proportions and the turning point of World War II in the Pacific. After the Battle of Midway, Japan was never able to go on the offensive again. Admiral Isoroku Yamamoto's decision to include the islands of Midway in his strategic plan against the United States was flawed and thus paved the way to a U.S. victory. Historians now believe that the victory at Midway had significant effects on the outcome of World War II in Europe:

- it allowed the United States to take its first offensive---that of invading North Africa---which ultimately resulted in the destruction of the German African Corps;
- Japan's defeat meant that Russia was able to transfer its troops from Manchuria to the east to bolster the defense of Stalingrad against German forces; and
- it guaranteed the timetable for the Allied invasion of Normandy.

For these reasons alone, Midway should have a functioning National Memorial and public visitation. But beyond its significance in the course of historical events, the Battle of Midway represents the courage, determination and sacrifice of the men who fought to retain Midway, and deserves to be memorialized throughout time by preserving Midway's history and by mandating a permanent policy of public visitation to the Atoll.

Jurisdiction (US Navy and the USFWS)

In 1996, jurisdiction over the Midway Atoll was transferred by the U.S. Navy to the U.S. Fish and Wildlife Service (USFWS). The IMMF encouraged Congress to designate the Midway Atoll as a National Memorial and its efforts were rewarded in November 2000 when President Clinton signed legislation that designated the Midway Atoll as a National Memorial. In that legislation the Secretary of Interior was directed to regularly consult with the IMMF on the management of the National Memorial. To date, neither the USFWS nor the Department of Interior has regularly consulted with the IMMF on the management of the National Memorial.

USFWS and Midway Phoenix Corporation

In 1996, Midway Phoenix Corporation (MPC) and the USFWS entered into a cooperative agreement for MPC to provide all logistic and administrative services on the Atoll at no expense to taxpayers. Only USFWS' room, board and mission activities were paid by the taxpayer.

From 1996-2002, MPC faithfully carried out this agreement in spite of draconian restrictions placed on its activities by USFWS. Examples of such measures were the closing of Eastern Island to the public (the site where the original airstrip is located), transferring endangered Hawaiian Monk seals to the shores of Midway Atoll which resulted in the closing of all heretofore public beaches, limiting cruise ships' access to Midway Atoll and limiting the sale of aviation fuel by MPC. The primary reason why MPC departed from Midway in 2002 was over the issue of aviation fuel. In 1996, when the U.S. Navy transitioned from Midway, it gave the remaining fuel in the tanks to the USFWS. In 1997, the remaining fuel was gifted to MPC because USFWS was not permitted to make a profit from the Wildlife Refuge. MPC then sold the fuel to transient aircraft at approximately \$5.00 a gallon. By 2002, MPC had invested 15 million dollars of its own money toward improving the infrastructure of the Atoll. With one month's supply of fuel remaining, USFWS demanded that MPC pay two million dollars for the aviation fuel that had been gifted to MPC in 1997. This non-negotiable and inexplicable action by the USFWS prompted MPC to leave Midway.

USFWS Financial Management of Midway Atoll

As previously stated, during the tenure of MPC's administration of Midway Atoll, all logistic and administrative operations were carried out on Midway at no expense to taxpayers. In 2003, after the departure of MPC, Chugach, a private sector company based in Alaska, took over the responsibility of maintaining Midway's infrastructure. The cost of operating Midway rose exponentially, all of which was borne by the taxpayers.

The IMMF obtained information about the financial expenditures by USFWS from two sources, the Interior Department Electronic Acquisition System (see attachment 1), and the Division of Congressional and Legislative Affairs (DCLA) (see attachment 2). The following data was acquired from IDEAS. In 2003, USFWS paid Chugach \$24,439,634. In 2004, this amount increased to \$86,376,374. In 2005, USFWS paid \$75,995,693 to Chugach. According to IDEAS, the total paid to Chugach by USFWS for the three-year period was \$186,811,701.

According to the report from DCLA, USFWS' Midway operating expenses from 2005-2013 varied from \$4,007,884 to \$4,781,505. For 2005, however, there is a striking discrepancy between the two sources of the expenditures by USFWS at Midway. As noted above, the IDEAS report indicates the expenses to Chugach were \$75,995,693, but the report from the DCLA states USFWS Midway costs were \$4,553,693. The difference of the two reported values requires further investigation (there was no data from DCLA for the 2003-2004 period). In conclusion, the minimal cost to taxpayers of MPC's administration of all operations on Midway rose to millions of dollars under USFWS/Chugach.

Decline and Cessation of Midway's Public Visitation Policy (2002 to 2014)

In the aftermath of MPC's departure, public visitation to Midway between the years 2002-2013 was allowed on a part-time basis in only four years out of the twelve-year period. In 2013, public visitation ceased.

On January 8, 2003, the IMMF submitted its feasibility study (see attachment 3) on a public visitation program. The study concluded that a public visitation program was most viable if a private contractor was utilized to maintain the entire infrastructure on Midway as well as to administer the public visitation program. The study was ignored by Interior and the USFWS.

In 2005, USFWS spent \$200,000 for a study to determinate the feasibility of reinitiating a public visitors program on Midway. This study also concluded that public visitation was most feasible if it were conducted by a private contractor, who would also be responsible all administrative and operational aspects of the Midway Atoll, including public visitation.

The conclusion of USFWS' feasibility study was similar to that of IMMF's 2003 study, but neither proposal was acted upon by the Department of Interior and USFWS. Apparent disregard for the conclusions of these studies indicates a lack of interest and/or desire by USFWS for any public visitation on Midway. In addition, USFWS plans to destroy the two large fuel tanks on Midway in 2016, a logistically irreversible change (see attachment). This would result in the destruction of what was historically the primary source of non-taxpayer income to the Atoll, and would---in reality---make any future public visitation to Midway impossible. Currently, USFWS is leasing smaller, above-ground portable fuel tanks. They do not have the capacity of the original tanks, and could be removed at any time. The existence of these tanks and their potential for easy removal strikes another blow to a potential visitation program.

In summary, the key to a successful public visitation program is to utilize a private sector contractor; this concept was supported by the IMMF's and the USFWS' feasibility studies, and MPC was able to demonstrate that this could be done successfully with no expense to taxpayers. USFWS has virtually ensured public visitation will never return to Midway by (1) eliminating the sale of aviation fuel to commercial and military aircraft; (2) by planning the destruction of the two large fuel tanks in 2016 which would severely limit the potential for profit-making fuel sales (the current fuel supply is solely for the use of USFWS' needs); (3) by allowing the deterioration of buildings; and (4) by carrying out---as well as planning for---the demolition of buildings and structures which would support public visitation. The measures USFWS have taken in the administration and operation of Midway since 2002 have only served the interests of the USFWS, with little regard for public visitation or for Midway's historic value.

Midway's Airstrip on Sand Island

The airstrip on Sand Island is no longer used as a full time alternate emergency landing site for

trans-Pacific flight nor is aviation available for aircraft. As recent as July 2014, an United Airlines trans-Pacific passenger plane was forced to make an emergency landing on Midway due to electrical difficulties.

USFWS Mismanagement of Midway's Infrastructure

The following has occurred under USFWS' watch:

- Despite the fact that some of the remaining lead-painted buildings are being maintained, others are being allowed to deteriorate, resulting in environmental contamination with lead paint chips, exposing the birds on the atoll to potential lead toxicity.
- In February 2003, between 75,000 to 100,000 gallons of fuel leaked from the fuel farm which was being manned by only one part-time employee, rather than the five full-time employees employed by MPC. It was estimated by the MPC Fuel Farm manager that at least five valves had to have been pressurized in order for the leak to occur. The leakage was the largest in recent Hawaiian archipelago history. According to the Honolulu Advertiser, it was estimated to have cost millions of dollars for USFWS to clean up the fuel leak.
- The USFWS demolished the Marine Barracks and four of the five historic telegraph cable buildings without any notification of such plans to the IMMF as directed by Public law 106-113: Section 126. The USFWS is also planning the total destruction of all the buildings and structures on Midway (see attachment 4).
- The Atoll remains closed to public visitation for the foreseeable future.

Current Reports

The preceding statements document USFWS' inability to manage all the functions of the Midway Atoll both administratively and operationally. This is clear from the 18-year history of its tenure on Midway. Currently, there are the following reports:

- that the private contractor Chugach has offered to leave before the April 15, 2016 expiration date;
- that aviation fuel is running low in the two large fuel tanks and will be empty in 2016, with no plan by USFWS to obtain additional fuel;
- only emergency aircraft will be permitted to land on Midway;
- Bonin Petrels (birds) have overtaken the Atoll, creating deep underground burrows, which lead to the death of young Laysan Albatross when they fall into the tunnels and injure the adult Albatross when they land.

Solutions to Midway's Problems

It is my opinion that there needs to be a change in the jurisdiction of Midway Atoll in order for it to become viable again, and for public visitation to occur on a consistent, fiscally sound basis. In addition, it is important that the airstrip on Sand Island operate once again as a full-time alternate trans-Pacific emergency landing site. On March 20, 2013, Senator Brian Schatz proposed one solution in Senate Bill S.616 which directs the Department of Interior to study the feasibility of having the National Park Service, as well as private and non-profit organizations, assume responsibility for preserving, protecting and interpreting the natural and historic resources at Midway.

On January 8, 2003, the IMMF offered to the Department of Interior its solution to Midway's difficulties (see attachment). It emphasizes that Midway Atoll can best be operated by the private sector, which in turn would administer the public visitation program. This scenario is feasible only if

- USFWS does not impede conditions in which a private contractor could make a profit, from, for example, the sale of aviation fuel to aircraft
- Midway's continued availability as an alternate emergency trans-Pacific landing site exists
- Midway's aviation fuel is offered to the U.S. Coast Guard as needed for its search and rescue missions.

In addition to revenues from aviation fuel, revenues need to be supplemented by public visitation. Using these basic principles, prior to its departure from Midway in 2002, MPC made a profit of \$26,138 with no cost to the taxpayer, despite restrictions placed upon it by the USFWS.

Regarding the governance of Midway Atoll, the foundation recommends a permanent Advisory Board of Governors be created that would include U.S. Fish and Wildlife Service, National Park Service, U.S. Coast Guard, U.S. Navy, FAA, the International Midway Memorial Foundation and a private contractor operating Midway. The President of the Board of Advisors would be rotated annually from each of its members, except the private contractor, and an annual budget and audit would be performed each year and reported back to the Secretary of Interior. This would allow for a viable management solution that meets the needs, and addresses the concerns, of those who have an interest in the future of the Atoll and all for which it stands.

ATTACHMENTS:

1. Report from the Interior Department Electronic Acquisition System detailing USFWS' expenses for the years 2003-2005
2. Report from the Division of Congressional and Legislation Affairs detailing USFWS' expenses for the years 2005-2014
3. USFWS' Plan (Removal Action Work Plan) to demolish the two fuel tanks (Above Ground Storage Tank (AST) on Midway in 2016
4. IMMF's feasibility study submitted to the Department of Interior in 2003